

REMARKS/ARGUMENTS

Favorable reconsideration of this application in light of the following discussion is respectfully requested.

Claims 18-36 are presently active in this case. The present Amendment amends Claim 18, and adds Claims 35-36.

The outstanding Office objected to the drawings because of informalities. Claims 18-34 were rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement. Claims 18-20 and 26 were rejected under 35 U.S.C. § 102(b) as anticipated by Kejr (U.S. Patent No. 4,487,004).

Claims 21-25 and 27-34 were indicated as allowable if rewritten to overcome the rejection under 35 U.S.C. §112, first paragraph.<sup>1</sup> Applicant acknowledges with appreciation the indication of allowable subject matter.

In response to the objection to the drawings and to the rejection under 35 U.S.C. §112, first paragraph, the claims are amended to clarify the claimed features, which are now clearly shown in the drawings. Specifically, independent Claim 18 is amended to no longer refer to first and second “work” positions. Instead, Claim 18 refers to a *first* position in which *the first, second and central gathering devices are in contact with the products*, and to a *second* position in which *the first and second gathering devices are in contact with the products but the central gathering device is not into contact with the products*. These changes to the claims are supported, and enabled by the disclosure as originally file, for example at page 5, lines 1-6. These features are shown in the figures, for example Fig. 5 shows the first position, and Fig. 6 shows the second position for the central gathering device.

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<sup>1</sup> The Office Action mentions the “second” paragraph at page 5, but it is assumed that “first” was intended since there is no rejection based on the second paragraph while there is a rejection based on the first paragraph of 35 USC 112.

Figure 1 shows the first, second and central gathering device in both the first and second positions as seen from above.

In order to vary the scope of protection recited in the claims, new dependent Claims 35-36 are added. New Claims 35-36 find support in the disclosure as originally filed, for example at page 7, lines 6-13; and at page 8, lines 12-19.

In response to the rejection of Claims 18-20 and 26 under 35 U.S.C. § 102(b), and in light of the present Amendment, Applicant respectfully requests reconsideration of this rejection and traverses the rejection, as discussed next.

The Kejr patent discloses a combine harvester with three assemblies 34, 36, 38. The lateral assemblies 36 and 38 can move relative to the central assembly 34, as seen in Fig. 9. However, the Kejr patent fails to disclose the claimed machine. In particular, the Kejr patent fails to disclose a machine including a central gathering device and a third windrowing device that can be transposed into a second position in which the central gathering device and the third windrowing device are offset relative to first and second gathering devices and windrowing devices such that *the first and second gathering devices are aligned with each other and in contact with the products but the central gathering device is not into contact with the products*, as now required by amended Claim 18.

Therefore, the Kejr patent fails to disclose every feature recited in Applicant's claims, so that Claims 18-20 and 26 are not anticipated by the prior art. Accordingly, Applicant respectfully submits that the present Amendment overcomes the 35 U.S.C. § 102 rejection based on the Kejr patent.<sup>2</sup>

Further, there is no apparent reason to modify the Kejr harvester so as to arrive at Applicant's claimed machine. The position that the Kejr harvester *could* be modified to

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<sup>2</sup> See MPEP 2131: "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference," (Citations omitted) (emphasis added). See also MPEP 2143.03: "All words in a claim must be considered in judging the patentability of that claim against the prior art."

arrive at the claimed inventions would be insufficient to establish a *prima facie* case of obviousness. It is not clear how such modification could be achieved without a substantial reconstruction or redesign of the Kejr harvester.<sup>3</sup>

In addition, the Kejr patent fails to disclose or suggest the machine claimed in the dependent claims in combination with the features of amended Claim 18. For example, the Kejr patent fails to disclose or suggest the features of new dependent claim 36, which requires that in the second position, the first, second and third windrowing devices are positioned such that the first and second windrowing devices can be driven to displace the products *to form a central windrow in a space freed by the central gathering device offset relative to the first and second windrowing devices.*

Consequently, in view of the present amendment, no further issues are believed to be outstanding in the present application, and the present application is believed to be in condition for formal Allowance. A Notice of Allowance for Claims 18-36 is earnestly solicited.

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<sup>3</sup> See In re Ratti, 270 F.2d 810, 813, 123 USPQ 349, 352 (reversing an obviousness rejection where the "suggested combination of references would require a substantial reconstruction and redesign of the elements shown in [the primary reference] as well as a change in the basic principle under which the [primary reference] construction was designed to operate.")

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Reply to Office Action of March 23, 2009

Should the Examiner deem that any further action is necessary to place this application in even better form for allowance, the Examiner is encouraged to contact Applicant's undersigned representative at the below listed telephone number.

Respectfully submitted,

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